

- in the alternative, annul or reduce, on the basis of Article 229 EC, the fine imposed on it by that decision;
- order the Commission to pay all the costs.

Pleas in law and main arguments

By this action, the applicant is seeking the partial annulment of Commission decision C(2007)512 final of 21 February 2007 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/E-1/38.823 — PO/Elevators and Escalators), concerning a cartel on the market for the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands, and relating to the manipulation of calls for tenders, market-sharing, price-fixing, the award of projects and sales contracts, the installation, maintenance and modernisation of machinery and the exchange of information, in so far as it concerns the applicant. In the alternative, the applicant seeks the annulment or reduction of the fine imposed on it by the contested decision.

In support of its action, the applicant submits that the Commission was wrong to find it jointly and severally liable for payment of the fine imposed on its subsidiary, a member of the cartel. It claims that the Commission was mistaken about the nature and extent of its shareholding in the share capital of its subsidiary in so far as the applicant is a purely financial company which does not carry out any trade of its own and that its shareholding in the subsidiary is a minority shareholding which does not exceed what is necessary for the protection of its financial interests. The applicant maintains also that the Commission has not stated to the requisite legal standard its reasons for finding that the applicant was involved in the cartel in question, in contrast to the personal role played by its shareholder, in his capacity as managing associate of the subsidiary.

Action brought on 30 April 2007 — UMG Recordings/OHMI — Osman (MOTOWN)

(Case T-143/07)

(2007/C 140/67)

Language in which the application was lodged: English

Parties

Applicant: UMG Recordings, Inc. (Santa Monica, USA) (represented by: E. Armijo Chávarri, A. Castán Pérez-Gómez, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal: Jimmy Osman (London, United Kingdom)

Form of order sought

The applicant petitions the Court:

- to admit its brief and documents appended thereto and consider an appeal to have been filed in good time and due order against the decision issued by OHIM's Second Board of Appeal on 15 February 2007 in Case R-523/2006-2 and following completion of appropriate procedural steps, to render judgment in due course overturning that decision and expressly ordering OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark subject of the application for revocation: the word Community trade mark 'MOTOWN' for goods and services in Classes 9, 25, 41 and 42 — application No 206 243

Proprietor of the Community trade mark: UMG Recordings

Party requesting the revocation of the Community trade mark: Jimmy Osman

Decision of the Cancellation Division: Upheld the revocation request for all contested services in Class 42 and rejected it insofar as it was directed against services in Class 41

Decision of the Board of Appeal: Upheld the appeal lodged by Jimmy Osman

Pleas in law: Infringement of Articles 15(1) and 50(1) of Council Regulation (EC) No 40/94.

The applicant claims that the Board allegedly erred in its assessment of evidence submitted to prove the use of its mark with regards to the contested services in Class 41.

First, the applicant submits that the Board failed to consider that the contested mark was the subject of acts of use for the contested services by both the registered proprietor and third parties with the proprietor's consent.

Secondly, according to the applicant the Board confused 'discotheques services' with 'the organisation of musical events' while it did not take into account that they fell into different categories of services.

Thirdly, the applicant contends that, even assuming that it did not participate either directly or indirectly in the provision of 'discotheques services' and/or the 'organisation of musical events' it should have been held that it did render specific services falling within the aforementioned categories and that the provision of those 'sub-services' served to overcome the obligation to use its mark for so-called general categories of services (namely, the contested services).